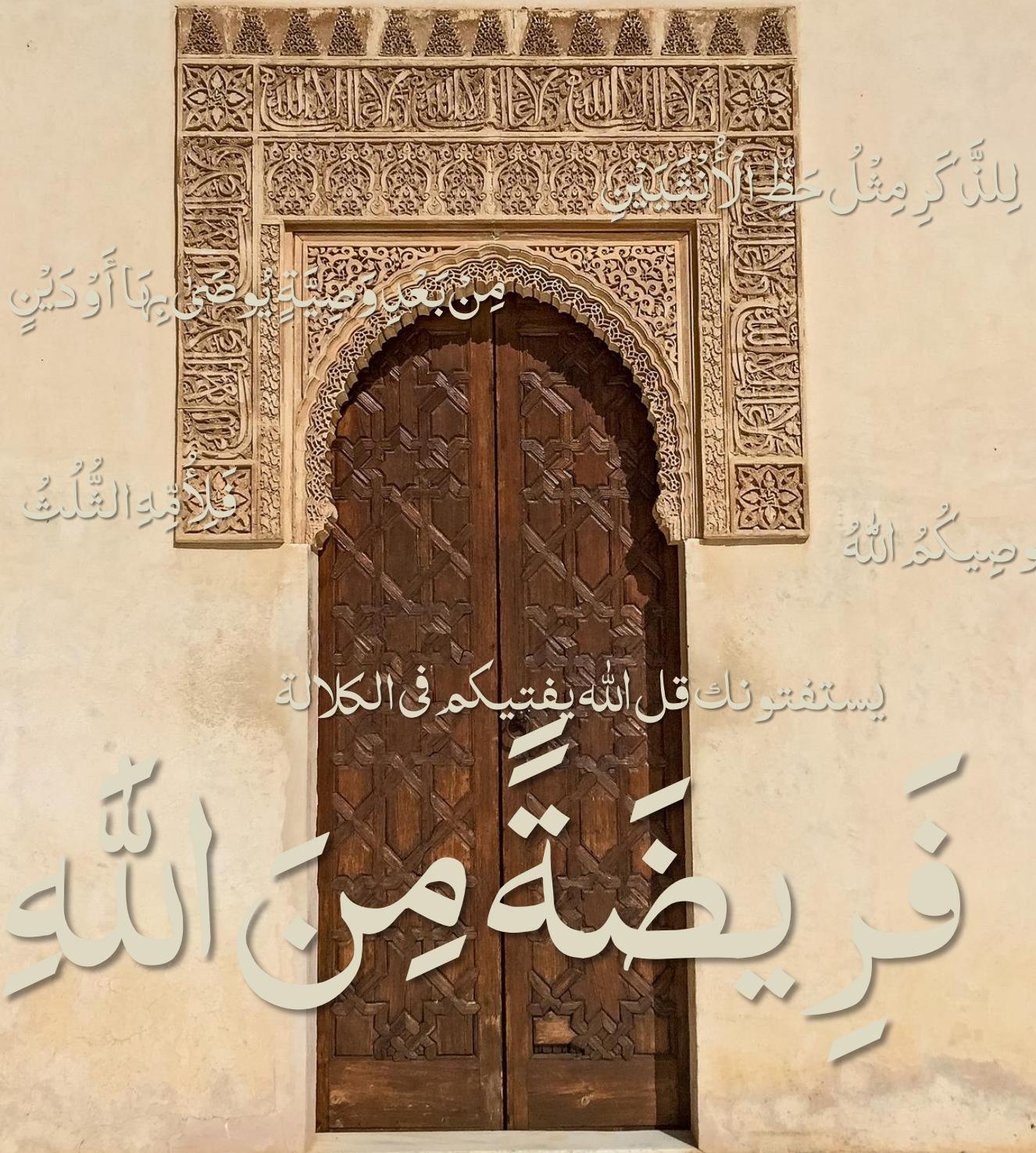


JAMI TIRMIDHI

# KITAB UL FARADH

NOTES AND EXPLANATION – MUHAMMAD NABEEL MUSHARRAF



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## **KITAB UL FARайдH – JAMI TIRMIDHI**

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## INTRODUCTION:

### ABOUT THIS BOOKLET:

- This document is a part of a bigger project that is aimed at integrating all the ahadith on the topic of *Ilm ul Faraidh* (Islamic laws of inheritance) and summarizing the rulings derived from them.
- This document is neither intended to cover all the details regarding *Ilm ul Faraidh* nor meant to be sufficient on its own. Accordingly, we have not defined many of the terms used in this booklet. However, they will be adequately explained in the complete book (*inshaAllah*).

### WHO IS THIS BOOKLET FOR:

- The English language commentaries for Jami Tirmidhi are not very common. It leaves students with very limited options if they do not have a grip on Arabic or another language. In order to bridge this gap, we have prepared this commentary which incorporate explanations from various sources.

### Stay tuned for our upcoming book (*InshaAllah*):

As mentioned above, **this booklet is a part of the bigger project – a comprehensive book on Ilm ul Faraidh. The book is** being written with the following objectives:

- Providing a clear explanation of the verses from the Quran, relevant *ahadith*, and the practices of the companions with regard to the distribution of inheritance (and 'laws' derived from these)
- Presenting a detailed overview of the extensions to the law made by the *fuqaha* with regards to the situations not seen till the time of the companions and where they agree or differ with each other
- Introducing a VERY EASY approach towards calculating the shares of inheritance
- Presenting a comparative review of inheritance laws in various religions
- Providing an overview of relevant legislative aspects in selected countries

**Publisher:** Australian Islamic Library (*InshaAllah*)

### ABOUT THE SUBJECT:

*Faraidh* (فِرَائِضٌ) is the plural of the word *Faridhah* (فِرِيْضَةٌ) which means to fix, or what has been made obligatory.

In legal terminology, *Faraidh* is that section of the Islamic law that deals with the distribution of the estate of a deceased person among his heirs in accordance with what has made mandatory by Allah SWT through the injunctions in the Holy Quran and prophetic traditions (Sunnah) of the Messenger of Allah ﷺ.

This definition is proven from the prophetic traditions. For example, consider the following hadith (Jame Tirmidhi – Book 29, Hadith 2243; Grade: Sahih).

أَكْحُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَمَوْلَى رَجُلٍ ذَكَرٍ

"Give the *shares of inheritance* (الْفَرَائِضَ) to those who are entitled to them. As for what remains, then it is for the closest male relative.'

The noble scholars of Islam have also used the word 'Faraidh' to represent the matters related to inheritance. We see chapters dedicated to Al-Faraidh in the major hadith collections, including (Sahih Bukhari, Shahih Muslim, Sunan Abu Dawud, Al-Muwatta and others).

In accordance with above, *Ilm ul Faraidh* can be defined as that branch of sacred knowledge which deals with the study of Faraidh. The subject can be defined as below.

هو علم بقواعد الفقهية وحسابية يعرف بها نصيب كل وارث من التركة

'Knowledge of those principles of jurisprudence and calculations with which the share of each heir can be determined from the tarkah (the inheritance left over by the deceased).'

A more elaborate definition is provided below:

This is the knowledge of the rules and cases of jurisprudence (*fiqh*) which, if known, will enable the person to be informed of (1) the legal heirs of the deceased (أيصال كل ذي حق حقه من التركة) and (2) the legal principles of how to determine the shares of their inheritance from what is left over by the deceased i.e. tarkah (كيف قسمة التركة بين المستحقين).

This field of study is also known as *Ilm ul Meerath* or *Ilm ul Mawarith* (plural of Meerath).

## ACKNOWLEDGEMENTS AND SOURCES:

In compiling this document, following sources have been used:

- Typewritten Arabic text and translation from Sunnah.com (sourced from Dar us Salam) -Caution: Some errors or ambiguous sentence structures are found in the translation available from Dar us Salam e.g. Hadith no. 2237.
- Commentary by Abu Khaleel (Dar us Salam)
- Commentary by Mufti Tariq Mahmood (Maktabah Sheikh ul Hind)
- Commentary by Maulana Nazim ud Din (Maktabah Al-Ilm)
- Other commentaries of Jami Tirmidhi and Sahih Muslim

## **RECOMMENDED TEXTS TO STUDY WITH THIS BOOK:**

- Arabic: Al-Sitraji Fi Meerath (Classical text)
- English: How to Calculate Inheritance: A Simple Approach (Author: Shakeel Ahmad Khan)
- Urdu: Fahm e Meerath ki Asan Rahain (Author: Mufti Imtiaz Khan Jadoon)

A huge collection of books on this subject can be found at Australian Islamic Library's website, under the section of Fiqh.

Website Address: <http://www.australianislamiclibrary.org/fiqh1.html>

## **A SINCERE REQUEST:**

We have tried our best to avoid any mistakes in this book in terms of interpretations, language, and expression. However, we accept our weakness and request you to highlight any mistakes to us so that they can be corrected.

## EXPLANATION OF AHADITH:

### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2233 (Grade: Hasan)

المتن:

حَدَّثَنَا سَعِيدٌ بْنُ يَحْيَى بْنُ سَعِيدٍ الْأَمْوَى، حَدَّثَنَا أَبُو سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "مَنْ تَرَكَ مَالًا فَلَا هِلْوَةَ وَمَنْ تَرَكَ ضَيْعَةً فَإِلَيَّ" قَالَ أَبُو عِيسَى هَذَا حَدِيبٌ حَسْنٌ صَحِيحٌ. وَفِي الْبَابِ عَنْ جَابِرٍ وَأَنَّسٍ، وَقَدْ رَوَاهُ الْزُّهْرِيُّ عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَطْوَلَ مِنْ هَذَا وَأَتَمَّ. مَعْنَى ضَيْعَةً صَاعًا لِيَسَرٍ كَمَا أَنْ عُولَةً وَأَنْفِقَ عَلَيْهِ

### Translation:

Abu Hurairah R.A. narrated that the Messenger of Allah ﷺ said:

"Whoever leaves wealth, then it is for his heirs, and whoever leaves poor dependants then it (the responsibility) is for me."

Abu 'Eisa said: This Hadith is Hasan Saheeh. Az-Zuhri reported it longer and more complete than this from **Abu Salamah** from Abu Hurairah from the Prophet ﷺ.

There are other narrations on this topic from Jabir and Anas, and the wording "ضياعاً" means 'wretched', i.e. a person who has nothing. For such a person, the prophet ﷺ said that the responsibility in such a case to take responsibility and spend on them lies with the prophet ﷺ.

### Key points:

- The state is responsible for assisting the poor who are not able to cater for their needs and do not receive much in inheritance
- If the legal heirs are available, the state does not forcefully acquire the estate

### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2234-2235 (Grade: Daif)

المتن:

حَدَّثَنَا عَبْدُ الْأَعْلَى بْنُ وَاعِصٍ، حَدَّثَنَا مُحَمَّدُ بْنُ الْقَاسِمِ الْأَسَدِيُّ، حَدَّثَنَا الْفَضْلُ بْنُ دَلْهِمٍ، حَدَّثَنَا عَوْفٌ، عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ

رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

"تَعْلَمُوا الْقُرْآنَ وَالْفَرَائِضَ وَعَلِمُوا النَّاسَ فَإِنِّي مَقِبُوْصٌ". قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ فِيهِ أَطْرَابٌ.

### Translation:

Abu Hurairah narrated that the Messenger of Allah ﷺ said: "Learn the laws of inheritance and the Qur'an, and teach the people, for I am a mortal." (Daif)

Abu Eisa said: There is Idtirab (i.e. a type of weakness in which the hadith is narrated in different wording by different narrators) in this Hadith.

### Note:

The hadith Hadith 2235 in Book 29 of Jami At-Tirmidhi explains further insights about the weakness of this hadith and explain that the narrator Muhammad bin Qasim Al-Asadi is graded as weak by Imam Ahmed Ibn Hanbal and other Muhaditheen.

### Key points:

- It is important to learn and teach the laws of inheritance

### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2236 (Grade: **Daif**)

المتن:

حَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، حَدَّثَنِي زَكَرِيَّا بْنُ عَرِيْقِي، أَخْبَرَنَا عَبْدُ اللَّهِ بْنُ عَمْرٍو، عَنْ عَبْدِ اللَّهِ بْنِ حُمَيْدٍ بْنِ عَقِيلٍ، عَنْ جَابِرِ بْنِ عَنْدِ اللَّهِ، قَالَ جَاءَتِ امْرَأَةٌ سَعْدِ بْنِ الرَّبِيعِ بِأَبْنَتِهِ مِنْ سَعْدٍ إِلَيَّ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَا رَسُولَ اللَّهِ أَتَانِي أَبْنَتِي سَعْدِ بْنِ الرَّبِيعِ قُتِلَ أَبُوهُمَا مَعَكَ يَوْمَ أُخْرَى شَهِيدًا وَإِنَّ عَنْهُمَا أَخْذَ مَا لَهُمَا فَلَمْ يَدْعُ لَهُمَا مَالًا وَلَا تُنَكِّحَاهُنَّ إِلَّا وَلَهُمَا مَالٌ.

قَالَ "يَقْعُدُ اللَّهُ فِي ذَلِكَ".

فَنَزَّلَتْ آيَةُ الْبِيرَاثِ فَبَعْثَرَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَيْهِمَا فَقَالَ "أَعْطِ ابْنَتَيْ سَعْدٍ الشُّلْقَيْنِ وَأَعْطِ أُمَّهُمَا التُّمْنَ وَمَا يَقْرَبُ فَهُوَ لَكَ".

قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ حَسْنٌ حَسِيقٌ لَا تَعْرِفُهُ إِلَّا مَنْ حَدَّثَنِي عَبْدُ اللَّهِ بْنُ حُمَيْدٍ بْنِ عَقِيلٍ وَقَدْ رَوَهُ شَرِيكٌ أَيْضًا عَنْ عَبْدِ اللَّهِ بْنِ حُمَيْدٍ بْنِ عَقِيلٍ.

### Translation:

"The wife of Sa'd bin Ar-Rabie came with her two daughters from Sa'd to the Messenger of Allah ﷺ and said: O Messenger of Allah ﷺ! These two are daughters of Sa'd bin Ar-Rabi who fought along with you on the day of Uhud and was martyred. Their uncle took their wealth, without leaving any wealth for them, and they will not be married unless they have wealth.

He ﷺ said: 'Allah will decide on that matter. The ayah about inheritance was revealed.

So the Messenger of Allah ﷺ sent (the command) to their uncle saying: Give the two daughters of Sa'd two thirds, and give their mother one eighth, and whatever remains, then it is for you.'

### Key points:

- If there are two daughters, they will receive 2/3<sup>rd</sup> in the estate. This is in case there is no son.
- In case, there are daughters, wife receives 1/8<sup>th</sup> of the estate.
- The uncle (father's brother) becomes the residual heir in such a case.

For example, his share in this case was as follows:

$$1 \text{ (full estate)} - \text{share of daughters (2/3)} - \text{share of wife (1/8)} = 1/8$$

### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2237 (Grade: Sahih)

المتن:

حَدَّثَنَا أَحْسَنُ بْنُ عَرْفَةَ، حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، عَنْ سُفْيَانَ التَّوْرِيِّ، عَنْ أَبِي قَيْمَسِ الْأَوْدِيِّ، عَنْ هُزَيْلِ بْنِ شَرْحِبِيلَ، قَالَ جَاءَ رَجُلٌ إِلَيْ أَبِي مُوسَى وَسَلَمَانَ بْنِ رَبِيعَةَ فَسَأَلَهُمَا عَنِ الْإِبْنَةِ وَابْنَةِ الْإِلَبِنِ، وَأَخْبَرَهُمَا أَبُو قَيْمَسُ الْأَوْدِيُّ فَقَالَ لِلْإِبْنَةِ وَلِلْإِلَبِنِ لَا تُحِبِّي مَاتِيقَنَ وَقَالَ لِهِمَا أَنْظَلْتُ إِلَيْكُمْ أَنْظَلَ اللَّهُ فَأَسَأَلَهُ فِي أَنَّهُ سُبِّيْتُ بِعِنْدِكُمْ فَأَنْتُمْ أَنْتُمْ الْمُؤْمِنُونَ إِذَا وَمَا أَتَمِنَ الْمُهَمَّدِينَ وَلَكُمْ أَقْضَى فِيهِمَا كَمَا قَضَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِلْإِبْنَةِ النِّصْفُ وَلِلْإِلَبِنِ السُّدُسُ تَكْمِيلَةَ الْثُلَثَيْنِ وَلِلْأُخْرَى مَاتِيقَنَ قَالَ أَبُو عِيسَى هَذَا حَدِيْثٌ حَسَنٌ وَأَبُو قَيْمَسِ الْأَوْدِيُّ أَسْمَهُ عَبْدُ الرَّحْمَنِ بْنُ ثَرَوَانَ الْكُوْفِيُّ وَقَدْ رَوَهُ شَعْبَةُ عَنْ أَبِي قَيْمَسِ.

### Translation:

A man came to Abu Musa and Salman bin Rabiah and asked them about

- a daughter (الابنة),
- a son's daughter (ابنة الابن), and a

- a *haqeeqi* sister (أُخْتٌ لِأَبٍ وَأُمٍّ)

So they said: For the daughter is half, for the *haqeeqi* sister is what remains.<sup>1</sup> And they said to him: Go to Abdullah (bin Masud) and ask him, for surely he will concur with us.<sup>1</sup>

So he went to 'Abdullah mentioning that to him and informing him what they had said.

'Abdullah said: 'If I give such a ruling, then I would have erred and not been among the rightly-guided (on the matter). Rather, I will judge as the Messenger of Allah ﷺ judged:

- For the daughter is half,
- For the son's daughter a sixth, totalling two-thirds [when considered in combination with the share of daughters] and
- For the sister is what remains.'

[Abu 'Eisa said:] This Hadith is Hasan Sahih.

Abu Qais Al-AwdI's (a narrator) name is 'AbdurRahman bin Tharwan Al-Kufi. Shu'bah also reported from Abu Qais.

#### Key points:

- It is explained about this hadith that the opinion of Abu Musa and Salman bin Rabiah was apparently based on the following *nusoos* (injunctions from the book and the sunnah):
  - o Firstly, the share of the daughter (if she is the only one among the offsprings of the deceased) is half
  - o Secondly, it is mentioned in the *ayah* about *kalalah*, that if a person dies without any offsprings (عَزِيزٌ) and has a sister, than the sister gets the half. It is possible that these companions would have considered the meaning *walad* to be male offsprings only (as it was commonly used in Arabic proverbs at that time)
  - o Thirdly, there is no prescribed share for the granddaughters in the Quran.

These companions made their *ijtihad* based on the Quran. However, when they came to know about the Sunnah in this regard through Abdullah Ibn Masood R.A. (who they considered more knowledgeable about this aspect than themselves, as evident from the text of the hadith), they changed their opinion and aligned it with the Sunnah of the messenger of Allah ﷺ (based on explanations provided in Tuhfa tul Ahwadhi and Mirqat ul Mafateeh).

- We learn about the following shares from this hadith:
  - o If there is only one daughter, she gets 1/2.
  - o The granddaughter(s) from son's side (in the absence of grandson), gets 1/6 (so that her share combined with the daughters becomes 2/3).
  - o The sister becomes the residual heir in such a case.

#### Hadith Reference:

Jami At-Tirmidhi - Book 29, Hadith 2238 (Grade: Daif)

## البيان:

حَدَّثَنَا إِبْرَاهِيمُ بْنُ هَارُونَ، أَخْبَرَنَا سُفْيَانُ، عَنْ أَبِي إِسْحَاقَ، عَنْ الْحَارِثِ، عَنْ عَلَىٰ، أَنَّهُ قَالَ إِنَّكُمْ تَغْرُرُونَ هَذِهِ الْآيَةَ: (وَمِنْ بَعْدِهَا وَصِيَّةٌ) تُوْصُونَ بِهَا أَوْكَدِينَ) وَأَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَصَّى بِاللَّذِينَ قَبْلَ الْوَصِيَّةِ وَإِنَّ أَعْيَانَ تَبَّىءِ الْأُمُّ يَتَوَارَثُونَ دُونَ تَبَّىءِ الْعَلَالَاتِ الرَّجُلُ يَرِثُ أَخَاهُ لَأَبِيهِ وَأُمِّهِ دُونَ أَخِيهِ لَأَبِيهِ.

حَلَّ شَأْنَاءً بِنَدَارٍ، حَلَّ شَأْنَاءً يَدْبُنْ هَارُونَ، أَخْبَرَ تَأَذِّنَ أَبِي زَيْدَةَ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي الْحَارِثِ، عَنْ عَلَيِّ، عَنِ الْحَسَنِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، يَمْثُلُهُ

### Translation:

Al-Harith narrated that 'Ali said: You recite this Ayah: [وَمَنْ بَعْدِ وَصِيَّةٍ تُوْصُونَ بِهَا أَوْ دَيْنٍ] and misunderstand it that the *wassiyah* has to be paid before the debt]. And the Messenger of Allah indeed judged the **debt before the will**, and that the children (sons and daughters) from the same mother and father inherit [from each other], not the sons from various mothers. The man inherits from his brother from his father, and his mother, [and] not his brother from his father."

Another narration also conveys the same meaning.

## Key points:

- Debts are to be settled before the distribution of the estate according to the *wassiyah* (if it meets the associated legal requirements)
- Children from same father and mother inherit from each other
- Children from a different father or mother do not inherit from each other [in the presence of children from the same mother and father]

### **Hadith Reference:**

Jami At-Tirmidhi - Book 29, Hadith 2240 (Grade: Hasan)

البَرْنَامِجُون

حَدَّثَنَا أَبْنُىٰ عُمَرُ، حَدَّثَنَا أَبْوَ إِسْحَاقَ عَنِ الْحَارِثِ، عَنْ عَلَىٰ قَالَ فَضَىٰ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّ أَعْيَانَ بَنَى الْأُمَّةِ يَتَوَارَثُونَ دُونَ بَنَى الْعَلَّالَةِ. قَالَ أَبُو عِيسَىٰ هَذَا حَدِيثٌ لَا نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ أَبِي إِسْحَاقَ عَنِ الْحَارِثِ عَنْ عَلَىٰ وَقَدْ تَكَلَّمَ بَعْضُ أَهْلِ الْعِلْمِ فِي الْحَارِثِ وَالْعَلَّالَةِ عَلَىٰ هَذَا الحَدِيثِ عِنْدَ عَامَةَ أَهْلِ الْعِلْمِ.

### Translation:

The Messenger of Allah ﷺ judged that the children (sons and daughters) from the same mother and father inherit, not the sons from various mothers.<sup>1</sup>

[Abu 'Eisa said:] We do not know of this Hadith except through the narration of Abu Isbaq

from Al-Harith, from 'Ali [i.e. that is the only source of transmission we have at that point].

Some of the

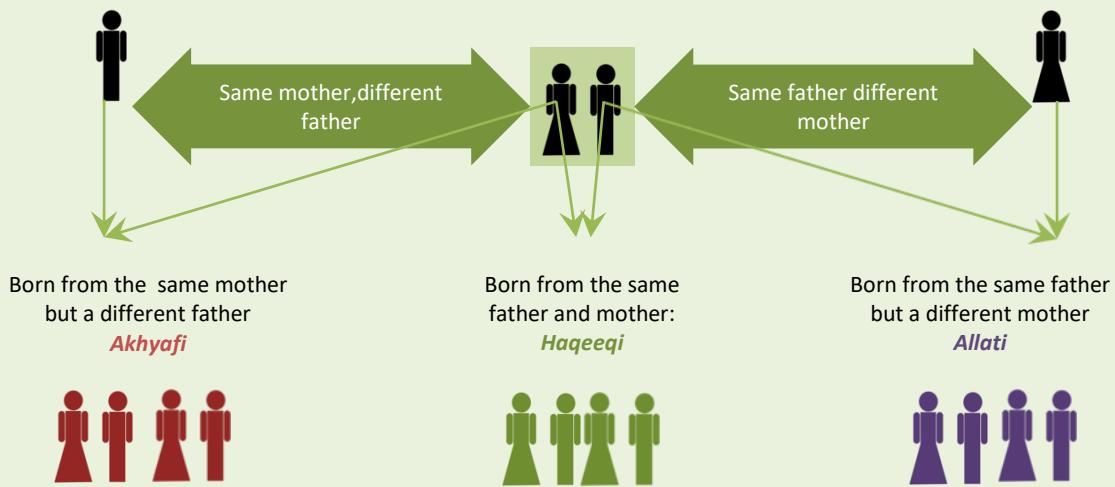
people of knowledge have criticized Al-Harith [and accordingly this hadith is classified as Hasan and not Sahih]. This Hadith has been acted upon according to the people of knowledge [in general].

### Key points:

- Children from same father and mother [*haqeeqi* siblings] inherit from each other
- Children from a different father or mother do not inherit from each other in the presence of *haqeeqi* siblings.

Note:

In the terminology of *Ilm Al Faraidh*, the children or offsprings can be divided in three categories:



### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2241 (Grade: **Hasan**)

المتن:

حَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ سَعْدٍ، أَخْبَرَنَا عَمْرُو بْنُ أَبِي قَيْمٍ، عَنْ مُحَمَّدِ بْنِ الْمُتَكَبِّرِ، عَنْ جَابِرٍ بْنِ عَنْدِ اللَّهِ، قَالَ جَاءَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَعْوَذُنِي وَأَنَّمِيرِي بِمُرْسَلِي سَلِيمَةَ قَتْلِي يَا أَبَيَ اللَّهِ كَيْفَ أَقْسِمُ مَالِي بَيْنِي وَلَدِي فَلَمَّا يَرَدَّ عَلَيَّ شَيْئًا فَأَنْزَلَهُ: (يُوَصِّيُّكُمُ اللَّهُ فِي أَوْلَادِكُمْ لَكُمْ لِلَّهِ مِمْلُوكٌ حَظُّ الْأُنْثَيَيْنِ) الْآيَةَ. قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رَوَاهُ شُعْبَةُ وَابْنُ عُيَيْنَةَ وَغَيْرُهُ عَنْ مُحَمَّدِ بْنِ الْمُتَكَبِّرِ عَنْ جَابِرٍ.

### Translation:

Jabir Ibn Abdullah R.A. said that the Messenger of Allah ﷺ came to visit me while I was ill at

Banu Salamah. I said: 'O Prophet of Allah ﷺ! How shall I divide my wealth among my children?' But he did not say anything to me [regarding the exact share], until the following was revealed: Allah commands you regarding your children's (inheritance):

يُوصِّيْكُمُ اللَّهُ فِي أُولَئِكَهُ مُثْلُ حَقِّ الْأُنْثَيَيْنِ

(i.e., 'to the male, a portion equal to that of two females.')

[Abu 'Eisa said:] This Hadith is Hasan Sahih. [Shu'bah and] Ibn 'Uyainah and others reported it from Muhammad bin Al-Munkadir, from Jabir, may Allah be pleased with him.

### Key points:

- It is important to explain here that the *ayah* of *Surah An-Nisa* (Quran 4:11) mentioned in this *hadith* (as revealed in relation Jabir R.A.'s situation) is also reported to have been revealed regarding the situation of the daughters of Saad Ibn Rabi (e.g. Sunan Abi Dawud 2891 – Hasan). Moreover, in some narrations, it is mentioned that the *ayah* revealed in this situation was that of *Kalalah* rather than the one mentioned in this *hadith* (e.g. Book 29, Hadith 2242 – Saheeh). The *mohaditheen* have given two explanations regarding this. Hafiz Ibn Hajar A-Asqalani explain that the wording known from Jabir R.A. is that '*ayah* of inheritance was revealed for his situation' with no further specific about which *ayah*. Imam Ibn Hajar explains that the specification about one of the two *ayahs* is attributed to the interpreters and transmitters<sup>1</sup>. According to the second opinion, both the *ayahs* were revealed in his case<sup>2</sup>; however, what was closely relevant to his case was the *ayah* about the *kalalah*.
- This narration is different from a number of other narrations about this event (in *Saheeh Bukhari*<sup>3</sup>, *Saheeh Muslim*<sup>4</sup>, *Sunan Abu Dawud*<sup>5</sup>, and *Sunan Ibn Majah*<sup>6</sup>) due to the following reason. Some of the relevant narrations mention about Jabir R.A.'s sisters<sup>7</sup> [where their share in inheritance was the consideration]. However, the wording in this narration seems to be unique in a way that in this he is reported to have asked about how to distribute his wealth among his offsprings (which he did not have any). We can accordingly consider the wording of other narrations to be more accurate as opposed to the wording of this single narration (which is classified

<sup>1</sup> This is applicable for both the narrations about this event in *Saheeh Buhari* (No. 6723 and 6743)

<sup>2</sup> This opinion is supported by Hadith 2832 in *Sunan Ibn Majah* which mentions both the narrations for this event.

<sup>3</sup> *Sahih al-Bukhari* 6723

<sup>4</sup> *Sahih Muslim* 1616

<sup>5</sup> *Sunan Abi Dawud* 2886, *Sunan Abi Dawud* 2887

<sup>6</sup> Hadith 2832

<sup>7</sup> *Sahih al-Bukhari* 6743, Hadith 2242

as 'Hasan' and not 'Saheeh'). This opinion is further strengthened by the observation that in other narrations, we observe that the transmitters are unsure about the exact wording. For example, consider the wording below from a report:

فَأَفَقْتُ فَقْلُتْ يَارَسُولَ اللَّهِ كَيْفَ أَقْبِي فِي مَالِيْ أَوْ كَيْفَ أَصْنَعُ فِي مَالِيْ

### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2242 (Grade: Sahih)

المتن:

حَدَّثَنَا الْفَضْلُ بْنُ الْمَتَّابِ الْبَعْدَادِيُّ، أَخْبَرَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، أَخْبَرَنَا مُحَمَّدُ بْنُ الْمُنْكَرِ، سَعْيَ جَابِرٍ بْنِ عَبْدِ اللَّهِ، يَقُولُ مِنْ صُدُّ فَأَتَانِي رَسُولُ اللَّهِ يَوْمَ الْوَصْلِ اللَّهُ عَلَيْهِ وَسَلَّمَ يَعْوَدُنِي فَوَجَدْنِي قَدْ أَغْمَيَ عَنِّي فَأَتَى وَمَعَهُ أَبُوبَكْرٌ وَعُمَرٌ وَهُمَا مَا شِيَانِ فَتَوَضَّأَ رَسُولُ اللَّهِ عَلَيْهِ وَسَلَّمَ فَصَبَّ عَلَيْهِ مِنْ وَضُوئِهِ فَأَفَقَثْ فَقْلُتْ يَارَسُولَ اللَّهِ كَيْفَ أَقْبِي فِي مَالِيْ أَوْ كَيْفَ أَصْنَعُ فِي مَالِيْ أَخْوَاتِ حَتَّى تَرَكَتْ آيَةُ الْبَيِّنَاتِ: (يَسْتَفْتُونَكُمْ قُلْ اللَّهُ يُفْتِنُكُمْ فِي الْكَلَالَةِ) الْآيَةُ. قَالَ جَابِرٌ فِي تَرَكَتْ. قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ حَسْنٌ صَحِيحٌ.

### Translation:

"I was ill, so the Messenger of Allah ﷺ came to visit me and found me unconscious. He came walking, while Abu Bakr and 'Umar were with him. The Messenger of Allah ﷺ performed *Wudu*, then poured the remaining water on me, so I came to my senses. I said: 'O Messenger of Allah ﷺ! How shall I dispose off my wealth?' - or - 'What shall I do with my wealth?' He ﷺ did not reply anything to me [at that time]. He [i.e. Jabir R.A.] had nine sisters. [The prophet did not reply] "until the Ayah about the inheritance was revealed:

يَسْتَفْتُونَكُمْ قُلْ اللَّهُ يُفْتِنُكُمْ فِي الْكَلَالَةِ

"They ask you for a legal verdict. Say: "Allah directs (thus) about *Al-Kalalah*."

Jabir R.A. said: "It was revealed regarding me."

### Key points:

- The guidelines about the matters of inheritance about the *kalalah* are available in the verse pointed out in this hadith. *Kalalah* is defined as someone who neither has ascendants nor descendants (as interpreted by the *mohaditheen*<sup>9</sup>).
- The Qur'anic Verse makes it clear that if a person dies and leaves behind neither parents nor children, but a single (real) sister, then the sister shall inherit half of his wealth. In case the sisters are more than one, they shall get a share of two-third of his wealth. If there is a brother in addition to the sister as well, the brother shall get twice

<sup>8</sup> Jami Tirmidhi - Book 29, Hadith 2242

<sup>9</sup> Sunan Abi Dawud 2889

as much as the sister (however, in this case, the shares per head will subsequently reduce).

#### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2243 (Grade: **Sahih**)

المتن:

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ، أَخْبَرَنَا مُسْلِمٌ بْنُ إِبْرَاهِيمَ، حَدَّثَنَا أَبْنُ طَلْوَسٍ، عَنْ أَبِيهِ، عَنْ أَبِيهِ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ "أَحْكُمُ الْفَرَائِضَ بِأَهْلِهَا فَمَا تَبَقَّى فَهُوَ لَوْلَى رَجُلٍ ذَكَرٍ"

#### Translation:

"Give the shares of inheritance to those who are entitled to them. As for what remains, then it is for the closest male relative.'

#### Key points:

- The hadith points out the presence of 'residual heirs'
- The hadith also establishes the basis of priority in male residual heirs based on the closeness of their relationship with the deceased.
- It is also pointed out that from among the residual heirs, the closest male relative gets the residual share. So there has to be a level of prioritization among the residual heirs and it is not expected that the residual estate would be distributed among them equally or in some proportion. The closest relative blocks all others after him from receiving any shares from the inheritance.

#### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2245 (Grade: **Daif**)

المتن:

حَدَّثَنَا الْحَسَنُ بْنُ عَرْفَةَ، حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، عَنْ هَشَامَ بْنِ يَحْيَى، عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ عُمَرَانَ بْنِ حُصَيْنٍ، قَالَ جَاءَ رَجُلٌ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنَّ أَبِيِّي مَاتَ فَمَا لِي فِي وِيَدِ اثْرَيْهِ قَالَ "لَكَ السُّلْسُ". فَلَمَّا وَلَّى دَعَاهُ فَقَالَ "لَكَ سُلْسٌ أَخْرَى". فَلَمَّا وَلَّى دَعَاهُ قَالَ "إِنَّ السُّلْسَ الْآخِرَ طَعْمَهُ". قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَفِي الْبَابِ عَنْ مَعْقِلِ بْنِ يَسَارٍ

#### Translation:

A man came to the Prophet ﷺ and said: 'My son died, so what do I inherit from him?'

He said: 'For you is a sixth.' When he turned to leave, he called him and said: 'For you is another sixth.' So when he turned to leave, he called him saying: 'The last sixth is consumable for you.'

**Key points:**

- In the explanation of this hadith, the *Muhaditheen* explain that the first 1/6 was the right of the grandfather as one of the *Zawil Furoodh* (i.e those whose shares have been specifically explained). The second 1/6 was as an *Asaba* (i.e. the residual heir), as in this case, the deceased had two daughters (who received 2/3<sup>rd</sup>) and he had no sons. The two shares (of 1/6 each) were given to him with a gap to ensure that people do not think that the right of father is 1/3 (whereas 1/3 in this case was because of two separate one sixths.)

**Hadith Reference:**

Jami At-Tirmidhi – Book 29, Hadith 2246 (Grade: **Sahih**)

المتن:

حَدَّثَنَا أَبْنُ أَبِي عُمَرَ، حَدَّثَنَا الزُّهْرِيُّ. قَالَ مَرَّةً قَالَ قَبِيْصَةَ بْنِ دُؤَيْبٍ قَالَ جَاءَتْ أُجْدَةُ أُمِّ الْأَمْمَاءِ أَوْ أُمِّ الْأَكْبَرِ إِلَيْهِ بَكْرٌ فَقَالَتْ إِنَّ أَبِي ابْنِي أَوْ ابْنِ بَنْتِي مَاتَ وَقَدْ أُخْبِرْتُ أَنَّهُ لِي فِي كِتَابِ اللَّهِ حَقًّا. فَقَالَ أَبُوبَكْرٍ مَا أَجِدُ لَكِ فِي الْكِتَابِ مِنْ حَقٍّ وَمَا سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَصْنِيَ لِكَ بِشَنِّ وَسَأَلَ الشَّافِعِيَّ وَسَأَلَ الْمَالِكِيَّ. قَالَ فَسَأَلَ فَتَمَّهَدَ الْغَيْرِيَّ بْنُ شَعْبَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَعْطَاهَا السُّدُسَ. قَالَ وَمَنْ سَعَدَ ذَلِكَ مَعَكَ قَالَ مُحَمَّدُ بْنُ مَسْلَمَةَ. قَالَ فَأَعْطَاهَا السُّدُسَ ثُمَّ جَاءَتْ أُجْدَةُ الْأُخْرَى الَّتِي تُخَالِفُهَا إِلَى عُمَرَ. قَالَ سُفْيَانُ وَرَأَدِنِي فِيهِ مَعْبُرٌ عَنِ الزُّهْرِيِّ وَلَمْ أَخْفَظْهُ عَنِ الزُّهْرِيِّ وَلَكِنْ حَفِظْتُهُ مِنْ مَعْبِرٍ أَنَّ عُمَرَ قَالَ إِنَّ أَجْدَةَ مَعْنَى فَهُوَ لَكُمَا وَأَيْتُكُمَا انْفَرَدَتْ بِهِ فَهُوَ لَهَا.

**Translation:**

A grandmother - the mother of a mother, or the mother of a father - came to Abu Bakr and she said: 'a son of my son' - or, 'a son of my daughter died, and I have been informed that there is a right (from the wealth) for me in the Book.' So Abu Bakr said: 'I do not find that there is a right for you in the Book, and I haven't heard that the Messenger of Allah ﷺ judged anything for you [regarding such a matter]. I shall ask the people.' So, Al-Mughirah bin Shu'bah testified that the Messenger of Allah ﷺ gave her (case) a sixth. He said: 'And who heard that along with you?' He said: 'Muhammad bin Maslamah.' He said: "So he gave her a sixth. Then the other grandmother who was left behind came to 'Umar." Sufyan said: "And Ma'mar said to me, in addition, from Az-Zuhri - and I do not remember it to be from A-Zuhri, rather I remember it to be from Ma'mar - that 'Umar said: 'If the two of you are [alive] together [at the time of distribution of the estate] then it is for both of you, and whichever of you is alone with it (the sixth), then it is for her.'

**Key points:**

- Paternal and maternal grandmothers are entitled to 1/6<sup>th</sup> of the estate. If both of

them are alive, then they share it among them. If not, whoever is alive, she takes all of the 1/6<sup>th</sup>.

### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2247 (Grade: Sahih)

المتن:

حَدَّثَنَا الْأَنْصَارِيُّ، حَدَّثَنَا مَعْنُ، حَدَّثَنَا مَالِكٌ، عَنْ أَبْنَى شِهَابٍ، عَنْ عُمَانَ بْنِ إِسْحَاقَ بْنِ حَرَشَةَ، عَنْ قَبِيْصَةَ بْنِ دُؤَيْبٍ، قَالَ جَاءَتِ الْجَلَدُ إِلَيْ أَبِي بَكْرٍ تَسْأَلُهُ مِيرَاثَهَا، قَالَ فَقَالَ لَهَا مَالِكٌ فِي كِتَابِ اللَّهِ شَيْئَهُ وَمَالِكٌ فِي سُنْنَةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ شَيْئَهُ فَأَرْجِعَهُ حَتَّى أَسْأَلَ النَّاسَ، فَسَأَلَ النَّاسَ فَقَالَ الْمُغَيْرَةُ بْنُ شُعْبَةَ حَضَرَتْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَأَعْطَاهَا السُّدُسَ، فَقَالَ أَبُو بَكْرٍ هَلْ مَعَكَ غَيْرِكَ فَقَامَ مُحَمَّدُ بْنُ مَسْلَمَةَ الْأَنْصَارِيُّ فَقَالَ مِثْلَ مَا قَالَ الْمُغَيْرَةُ بْنُ شُعْبَةَ فَأَنْفَذَهَا أَبُو بَكْرٍ، قَالَ ثُمَّ جَاءَتِ الْجَلَدُ الْأُخْرَى إِلَيْهَا مِيرَاثُهَا فَقَالَ مَالِكٌ فِي كِتَابِ اللَّهِ شَيْئَهُ وَلَكِنْ هُوَ ذَكَرُ السُّدُسِ فَإِنْ اجْتَمَعْتُمْ فِيهِ فَهُوَ بَيْنَكُمَا وَإِنْ تَكُمَا خَلَتْ بِهِ فَهُوَ لَهَا، قَالَ أَبُو عِيسَى وَفِي الْبَابِ عَنْ بُرْيَدَةَ، وَهَذَا أَحْسَنُ وَهُوَ أَصْحَحُ مِنْ حَدِيثِ أَبْنَى عَيْنِيَّةَ.

### Translation:

A grandmother came to Abu Bakr to ask him about her inheritance. He said to her, 'There is nothing for you in the Book of Allah and there is nothing for you in the Sunnah of the Messenger of Allah ﷺ. So ,return until I ask the people. So he asked the people and Al-Mughirah bin Shu'bah said: 'I was present when the Messenger of Allah ﷺ gave her (case) a sixth.' So he said: 'Was anyone else with you?' Muhammad bin Maslamah stood to say the same as what Al-Mughirah bin Shu'bah said. So Abu Bakr implemented that for her." Then the other grandmother came to 'Umar bin Al-Khattab to ask him about her inheritance. He said: 'There is nothing in the Book of Allah for you, but there is that sixth. So if the two of you are together then it is for both of you, and whichever of you remains), then it is for her.'"

### Key points:

- Paternal and maternal grandmothers are entitled to 1/6<sup>th</sup> of the estate. If both of them are alive, then they share it among them. If not, whoever is alive, she takes all of the 1/6<sup>th</sup>.

### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2248 (Grade: Daif)

المتن:

حَدَّثَنَا الْحَسْنُ بْنُ عَرْفَةَ، حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، عَنْ مُحَمَّدِ بْنِ سَالِمٍ، عَنْ الشَّعْبِيِّ، عَنْ مَسْرُوقٍ، قَالَ فِي الْجَلَدِ مَعَ ابْنِهَا أَوْلَ جَدَّةٍ

أَطْعَمَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ سُدًّا مَعَ ابْنَهَا وَابْنَهَا حَمْرَةً. قَالَ أَبُو عِيسَى هَذَا حَبِيبُ لَا تَعْفُهُ مَرْفُوعًا إِلَّا مِنْ هَذَا الْوَجْهِ. وَقَدْ وَرَثَ بَعْضُ أَصْحَابِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْجَدَّةَ مَعَ ابْنَهَا وَلَمْ يُوْرِثْهُمَا بَعْضُهُمْ.

**Translation:**

The Messenger of Allah ﷺ gave the first grandmother, along with her son, a sixth for them to consume while her son was living.

[Abu 'Eisa said:] We do not know of this hadith to be Marfu' except through this route. Some of the Companions of the Prophet gave the grandmother, along with her son inheritance, and some of them did not give her inheritance.

**Key points:**

- In the opinion of Ibn Mas'ud, 'Umar, and Abu Musa Ash'ari, even in the presence of the deceased person's father, the grandmother would be the recipient of inheritance. Qadi Shuraih, Hasan and Ibn Sirin concur with this opinion.
- Uthman, 'Ali, and Zaid bin Thabit , however, are of the view that in the given situation [i.e. when the father of the deceased is alive], the grandmother would not get anything from the deceased person's wealth. Imam Ishaq and Ahmad Ibn Hanbal concur with Ibn Mas'ud's position while Imam Shäfi'i, Ath-Thawri, Al-Awza'i are in agreement with the view held by 'Uthman .

The opinion of the majority of the *fuqaha* in this regard is that in the presence of father of the deceased, grandmother would not inherit. They present the following reasons for their opinion:

- This is a *daif* hadith and cannot be used for formulating a ruling
- It may be possible that the father of the deceased would have been ineligible to receive inheritance (e.g. a non-believer, a murderer, a slave etc.)
- The share that is mentioned in this hadith could be out of mutual agreement and as an *Ihsan* (which is allowed if all heirs agree on terms and amounts of distribution)
- This reference could be for maternal grandmother (as the same word is used for both the grandmothers) and she could have been given the inheritance in the presence of her son.

**Hadith Reference:**

Jami At-Tirmidhi – Book 29, Hadith 2249 (Grade: **Hasan**)

المتن:

حَدَّثَنَا أَبُو أَحْمَدَ الْزَّبِيرِيُّ، حَدَّثَنَا سُفْيَانُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ، عَنْ حَكِيمِ بْنِ عَبَادِ بْنِ حُنَيْفٍ، عَنْ أُمَّةِ الْمَّأْمَةَ بْنِ سَهْلٍ بْنِ حُنَيْفٍ قَالَ كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَيْيَ أُبَيِّ بْنِ دَدَأَنَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ "اللَّهُ وَرَسُولُهُ مَوْلَى مَنْ لَا مَوْلَى لَهُ وَالْخَالُ وَارِثُ مَنْ لَا وَارِثَ لَهُ" قَالَ أَبُو عِيسَى وَفِي الْبَابِ عَنْ عَائِشَةَ وَالْمِقْدَامِ بْنِ مَعْدِيَكَرِبٍ وَهَذَا حَدِيثٌ حَسْنٌ صَحِيحٌ.

#### Translation:

" 'Umar bin Al-Khattab sent me with a letter to Abu'Ubaidah (saying) that The Messenger of Allah(S.A.W) said : 'Allah and His Messenger are responsible for the one who has no patron. And the maternal uncle inherits from the one who has no heirs.'"

#### Key points:

- According to this hadith, maternal uncles belong to a group of heirs called 'zawil Arham'. This group neither has prescribed shares (unlike Zawil Furoodh) nor do they become a residual heirs (unlike Asabah). This group can only receive shares in inheritance when *zawil furoodh* and *asaba* are not alive or are not eligible to become heirs (as highlighted in this *hadith*).

#### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2250 (Grade: Hasan)

المتن:

أَخْبَرَنَا إِسْحَاقُ بْنُ مَنْصُورٍ، أَخْبَرَنَا أَبُو عَاصِمٍ، عَنْ أَبِي جَرْجَيْجِ عَنْ عَمِّهِ وَبْنِ مُسْلِمٍ، عَنْ طَاؤِسٍ، عَنْ عَائِشَةَ، قَالَتْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "الْخَالُ وَارِثُ مَنْ لَا وَارِثَ لَهُ" وَهَذَا حَدِيثٌ حَسْنٌ غَرِيبٌ وَقَدْ أَرْسَلَهُ بَعْضُهُمْ وَلَمْ يُذْكُرْ فِيهِ عَنْ عَائِشَةَ، وَأَخْتَلَفَ فِيهِ أَخْطَابُ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَوَرَّثَ بَعْضُهُمُ الْخَالَ وَالْخَالَةَ وَالْعَمَّةَ وَإِلَيْهِمْ أَخْبَرَ أَكْثَرُ أَهْلِ الْعِلْمِ فِي تَوْرِيَثِ ذَكْوَى الْأَخْحَامِ وَأَمَّا زِيدُ بْنُ ثَلِيلٍ فَلَمْ يُورِثْهُمْ وَجَعَلَ الْبَيْرَاتَ فِي بَيْتِ النَّبِيِّ.

#### Translation:

" 'Umar bin Al-Khattab sent me with a letter to Abu'Ubaidah (saying) that The Messenger of Allah(S.A.W) said : 'Allah and His Messenger are responsible for the one who has no patron. And the maternal uncle inherits from the one who has no heirs.'"

#### Key points:

- This hadith, though it has a few weaknesses in some of the chains of transmission, also reinforces the point mentioned in the previous hadith, i.e. maternal uncles (who belong to *zawil arham*) inherit when *zawil furoodh* and *asaba* are not present or none of them is eligible.
- With regards to the inclusion of maternal aunt and paternal aunt in the *zawil arham*,

a difference of opinion existed among the companions. Some of them gave shares to maternal uncle, maternal aunt, and paternal aunt, while Zaid Ibn Thabit R.A. is reported to have sent the shares in such a case to the *bayt ul Maal*.

- Among the four schools of thought, hanafis and hanbalis consider *zawil arham* to be the heirs whereas shafiis and malikis do not consider them to be the heirs.
- Those who consider *zawil arham* to be the heirs cite the following to support their opinion:
  - Maternal Uncle is defined as a heir in various *ahadith*. He is neither among the *zawil furoodh* nor from the *asaba*. This shows that *zawil arham* can inherit.
  - It is mentioned in *Surah Anfal*, verse 75 that according to the Book of Allah the blood relatives (*Oolil Arham*) have greater rights on one other. These relatives are not distinguished between those for whom shares have been prescribed and those for whom they are not.
  - It is also found in a *hadith* where the inheritance was given to the nephew who is neither among *zawil furoodh* nor among the *asaba*. This, accordingly, also indicates that a third category of heirs does exist (which is classified by scholars as *zawil arham*).

#### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2251 (Grade: **Hasan**)

المتن:

حَدَّثَنَا نَبِيْدَارٌ، حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، أَخْبَرَنَا سُفْيَانُ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَضْبَهَانِيِّ، عَنْ جَحَادِهِ، وَهُوَ ابْنُ وَرْدَانَ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أَنَّ مَوْلَى لِلنَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَقَعَ مِنْ عَلْقِ تَحْكَمِ فَتَاتَ قَفَالَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "اَنْظُرْ وَاهْلَ لَهُوْنَ وَارِثَ". قَالُوا لَرَبِّهِ قَالَ "فَادْفَعُوهُ كُلَّ بَعْضٍ أَهْلِ الْقَرِيْةِ". وَهَذَا حَدِيْثٌ حَسَنٌ.

#### Translation:

'Aishah narrated that a freed slave of the Prophet ﷺ fell from foliage on a date-palm and died. So the Prophet ﷺ said: "See if he has any heirs." They said: "No." He ﷺ said: "Pay it to someone among the people of the town."

#### Key points:

- Those who free the slaves can inherit from them in certain cases (Al-Mughni, v.9, p.215). But as the Prophets of Allah do not inherit any money or wealth from anyone, the Messenger of Allah ﷺ took nothing from whatever was left behind by his freed

slave, and asked it to be given to some needy person around.

- This hadith also explains that in similar situations, the estate has to go to the needy people of one's town.

### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2252 (Grade: **Hasan**)

المتن:

حَدَّثَنَا أَبْنُ أَبِي عُمَرَ، حَدَّثَنَا سُفْيَانُ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ عَوْنَجَةَ، عَنْ أَبْنِ عَبَّاسٍ، أَنَّ رَجُلًا مَاتَ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَلَمْ يَدْعُ وَارِثًا لَا يَكْفِي هُوَ أَعْتَقَهُ فَأَعْطَاهُ الْيَتَمُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَيَرَاةً. قَالَ أَبُو عِيسَى هَذَا حَدِيثُ حَسَنٍ. وَالْعَمَلُ عِنْدَ أَهْلِ الْعِلْمِ فِي هَذَا الْبَابِ إِذَا ماتَ الرَّجُلُ وَلَمْ يَرُثْ عَصَبَةً أَنْ يُبَرَّأَهُ يُجْعَلُ فِي بَيْتِ مَالِ الْمُسْلِمِينَ.

### Translation:

Ibn 'Abbas R.A. narrated that a man died during the time of the Messenger of Allah ﷺ and he did not leave any heirs except for a slave that he had freed. So the Prophet ﷺ gave him his inheritance. [Abu 'Elsa said:] This Hadlth is Hasan. What is acted upon regarding this topic - according to the people of knowledge - is that when a man dies and he leaves no relatives behind, then his inheritance is placed into the Muslims' Bayt Al-Mal.

### Key points:

- Qadi Shuraih and Tawus hold the view that, if the master has not left behind any heir except for a slave whom he had freed, then the freed slave will get his inheritance just as the master inherits the freed slave, if the latter leaves behind no heirs. But the view of the majority of the *fuqaha* is that in such a case the inheritance shall go to Bait Al-Maal (public treasury of a Muslim state), as explained in *Tuhfat Al-Ahwadhi*. The *ulema* who recommend for the estate to be deposited in the *bayt al maal* (in such a situation) explain that for the cases such as the one mentioned in this hadith, the freed slave was given a share in inheritance because he was needy and deserving.
- It can be said that the needy and the poor who are closer to the deceased should be considered first at the time of distribution of estate. In another situation (as mentioned in the previous hadith i.e. Jami At-Tirmidhi – Book 29, Hadith 2251), when the deceased did not leave any heirs (nor a deserving free slave), the estate was distributed to the people of the town of the deceased as they were deserving and closer to the deceased.

- As the issues of slaves is no more applicable in today's age, it is beyond the scope of this explanation to elaborate the reasons behind these opinions.

## **Hadith Reference:**

Jami At-Tirmidhi - Book 29, Hadith 2253 (Grade: **Saheeh**)

البَتْنَ:

حَلَّتْنَا سَعِيدَ بْنَ عَبْدِ الرَّحْمَنِ الْمَخْزُومِيَّ وَغَيْرُهُ وَاحِدٍ. قَالُوا حَلَّتْنَا سُفِيَّاً، عَنِ الزُّهْرِيِّ. حَوَّلَ ثَنَاعِيُّ بْنُ مُحَمَّدٍ، أَخْبَرَهُ أَهْشِيمُ، عَنِ الزُّهْرِيِّ. عَنْ عَلَىٰ بْنِ حُسَيْنٍ، عَنْ عَمِّهِ بْنِ عُمَانَ، عَنْ أَسَامَةَ بْنِ زَيْدٍ. أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ "لَا يُرِثُ الْمُسْلِمُ الْكَافِرُ وَلَا الْكَافِرُ الْمُسْلِمُ". حَدَّثَنَا أَبُو حَمْزَةَ عَنْ حَلَّتْنَا الزُّهْرِيَّ حَوْنَةَ، قَالَ أَبُو عَيْسَى وَفِي الْبَابِ عَنْ جَابِرٍ وَعَبْدِ اللَّهِ بْنِ عَمْرِو. وَهَذَا حَدِيثُ حَسَنٍ صَحِحُهُ هَذَانِ أَرَوَاهُ مَعْمَرٍ وَغَيْرَهُ وَاحِدٍ عَنِ الْزُّهْرِيِّ تَحْوِهِهَا. وَرَوَى مَالِكٌ عَنِ الزُّهْرِيِّ عَنْ عَيْسَى بْنِ حُسَيْنٍ عَنْ عَمِّهِ بْنِ عُمَانَ عَنْ أَسَامَةَ بْنِ زَيْدٍ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَحْوِهَهُ وَحَدِيثُ مَالِكٍ وَهُمْ وَهُمْ فِيهِ مَالِكٌ وَقَدْرَهُ وَأَبْعَضُهُمْ عَنْ مَالِكٍ فَقَالَ عَنْ عَمِّهِ بْنِ عُمَانَ وَأَكْثَرَ أَخْتَابِ مَالِكٍ قَالُوا عَنْ مَالِكٍ عَنْ عَمِّهِ بْنِ عُمَانَ وَعَمِّهِ بْنِ عُمَانَ بْنِ عَفَانَ هُوَ مَشْهُورٌ مِنْ وَلَدِ عُمَانٍ وَلَا يُعْرَفُ عَمِّهِ بْنِ عُمَانَ. وَالْعَمَلُ عَلَى هَذَا حَدِيثِ عِنْدَ أَهْلِ الْعِلْمِ وَالْخَلَفُ بَعْضُ أَهْلِ الْعِلْمِ فِي مِيرَاثِ الْمُرْتَدِ فَجَعَلَ أَكْثَرَ أَهْلِ الْعِلْمِ مِنْ أَخْتَابِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَغَيْرِهِمُ الْمَالَ لِوَرَثَتِهِمْ الْمُسْلِمِينَ. وَقَالَ بَعْضُهُمْ لَا يُرِثُهُ وَرَثَتِهِ مِنَ الْمُسْلِمِينَ وَأَخْتَجُوا بِحَدِيثِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "لَا يُرِثُ الْمُسْلِمُ الْكَافِرُ". وَهُوَ قَوْلُ الشَّافِعِيِّ.

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### Translation:

Usamah bin Zaid narrated that the Messenger of Allah ﷺ said: "The Muslim does not inherit from the disbeliever, nor the disbeliever from the Muslim. " [Sahih]

(The rest of the discussion in the text about this hadith deals with various chains which is beyond the scope of the current topic.)

### Key points:

- We learn from this hadith that the Muslims and non-Muslims cannot inherit from each other. This aspect is further explained with the next hadith.

## **Hadith Reference:**

Jami At-Tirmidhi - Book 29, Hadith 2254 (Grade: **Saheeh**)

## المعنى:

حَلَّتْنَا حُمَيْدَ بْنَ مَسْعَدَةَ. حَلَّتْنَا حُصَيْنَ بْنَ مُمَيْهِ، عَنْ أَبْنَ أَبِي لَيْلَى، عَنْ أَبِي الرَّبِيعِ، عَنْ حَاجَبِي، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ "لَا يَتَوَارَثُ أَهْلُ مَلَكَتِيْنِ". قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ لَا نَعْرُفُهُ مِنْ حَدِيثِ حَاجَبٍ إِلَّا مِنْ حَدِيثِ أَبْنَ أَبِي لَيْلَى.

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### Translation:

"The people of two religions do not inherit from each other." This hadith is *ghareeb* and we

do not know of it from Jabir except through the narration of Abi Laila.

**Key points:**

- People from any 'Millah' (Arabic: ملة - 'a group following the same religion' or 'a group that is considered to be one entity based on some aspect') inherit only from their own *millah* or group. Many of the jurists and scholars from the shafi'i's, hanafi's, and hanbali's consider the disbelievers to be one group and say that **الكفر ملة واحدة** . Therefore, according to them, all disbelievers can inherit from each other irrespective of their religion as they are one *millah* because of *kufr* which is a common factor among them). This is the explanation provided by Imam Ibn Al Hajar Asqalani in *Fath ul Bari*. However, the view of Imam Malik is that **الكفر ملل** and he accordingly considers each religion to be a separate *millah*. By this interpretation, Jews and Christians (and people of other faiths) cannot inherit from each other, but only from the people of their own faith.
- In modern days, those who do not adhere to any faith can also be considered a *millah* and can be treated as a separate *millah*.
- With regards to apostates (المرتدين), it is an *ijma* of the *fuqaha* that they do not inherit from the Muslims. However, there is a difference of opinion regarding if Muslims can receive the inheritance from the apostates. Imam Malik and many other scholars believe that the Muslims do not inherit from the apostates. However, Hanafi's (and some other *fuqaha*) rule that the wealth that the apostates acquire during their time as Muslims would be inherited whereas that which they acquired after *irtidad* (becoming apostate) will not be inherited by Muslims.

**Hadith Reference:**

Jami At-Tirmidhi – Book 29, Hadith 2255 (Grade: **Hasan**)

المتن:

حَدَّثَنَا قَتْبِيَّةُ، حَدَّثَنَا الْلَّيْثُ، عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ، عَنْ الرُّزْهِيِّ، عَنْ مُمِيَّذِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ "الْقَاتُلُ لَا يَرِثُ". قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ لَا يَصِحُّ وَلَا يُعْرَفُ إِلَّا مِنْ هَذَا الْوَجْهِ، وَإِسْحَاقُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي قَدْرَةَ كَهْبُ بْنَ أَحْمَدَ بْنَ حَبْيَلٍ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ أَنَّ الْقَاتُلَ لَا يَرِثُ كَانَ الْقَاتُلُ عَمَّا أَوْحَطَهُ، وَقَالَ بَعْضُهُمْ إِذَا كَانَ الْقَاتُلُ حَطَّافًا فِي أَنَّهُ يَرِثُ وَهُوَ تَوْلُ مَالِكٍ.

**Translation:**

Aba Hurairah R.A. narrated that the Prophet ﷺ said: "The murderer will not inherit." [Abu

'Elsa said:] This Hadith is not saheeh [however, this ruling is known to us from a number of other narrations as well]. This is not known except through this route. Ishaq bin 'Abdullah bin Abl Farwah was abandoned by some of the people of knowledge, among them [Imam] Ahmad bin Hanbal. This is acted upon according to the people of knowledge, the murderer will not inherit whether the murder was a mistake or on purpose. Some of them said that if the murder was a mistake, then he inherits, and this is the view of [Imam] Malik.

#### **Key points:**

- Scholars of religion are unanimous in their view that an intentional murderer will not inherit from the victim. Similarly, most of the scholars hold the view that even the person responsible for manslaughter will not inherit from the victim.
- However, a different opinion exists regarding un-intentional murder. We are quoting an explanation from Mufti Muhammad ibn Adam (Darul Iftaa, Leicester , UK) to further clarify this aspect:

Not every type of killing or “causing” of death is a hindrance to inheritance; rather, there is some detail in this regard. It is stated in the renowned Hanafi Fiqh reference work, Al-Fatawa al-Hindiyya: “One who kills unjustly does not inherit anything from [the estate of] the one killed according to us, whether he killed him deliberately or accidentally...” (Al-Fatawa al-Hindiyya, 6/454).

It is further explained, as a principle, that a killing which in-of-itself necessitates the law of retaliation (qisas) or expiation (kaffara) is considered “direct” killing, hence a hindrance from inheritance. However, a killing which in-of-itself does not necessitate the law of retaliation (qisas) or expiation (kaffara) is considered “indirect” killing, hence it will not be a hindrance from inheritance.

The law of retaliation (qisas) or expiation (kaffara) are necessitated in the following three ways. As such, a killer does not inherit from his victim if he:

- a) *Intentionally* kills his victim with a tool/weapon that would normally kill, such as a gun, sharp knife, sword, or a heavy sharp rock (qatl amad).
- b) *Intentionally* kills his victim with a tool that normally is not used to kill someone but it killed his victim nevertheless, such as a stick,

small stone or strangling (qatl shibh amad). [m: Intentionally running someone over with a car and killing them would also fall under this category].

c) Mistakenly kills his victim, such as, in a hunting session, trying to shoot an animal, he mistakenly killed his victim (qatl khata'). [m: Mistakenly running someone over with a car and killing them would fall under this category].

If the above three types of killing took place at the hands of a mature (baligh) and sane person, then he will be deprived of inheritance from the estate of his victim. However, if death was “caused” in other than the above three ways, i.e. it was indirect, then the killer will inherit from his victim's estate.

#### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2256 (Grade: **Saheeh**)

المتن:

حَدَّثَنَا قُتَيْبَةُ وَأَحْمَدُ بْنُ مَنْبِعٍ وَغَيْرُهُ وَاحِدٌ، قَالُوا حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الرُّهْبَرِ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، قَالَ قَالَ عُمَرُ الْبَرِّيَّةُ عَنِ الْعَاقِلَةِ وَلَا  
تَرُثُ الْمَرْأَةُ مِنْ دِيَّةِ زَوْجِهَا شَيْئًا. فَأَخْبَرَهُ الصَّحَّاْكُ بْنُ سُفْيَانَ الْكِلَابِيَّ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَتَبَ إِلَيْهِ أَنَّ وَرِثَةَ أَشْيَمَ الْقِبَابِيِّ مِنْ  
دِيَّةِ زَوْجِهَا. قَالَ أَبُو عِيسَى هَذَا حَدِيثُ حَسَنٍ حَكِيمٌ.

#### Translation:

'Umar said: 'The blood-money is upon the 'Aqilah, and the wife does not inherit anything from the blood-money of her husband.' So Ad-Dahhak bin Sufyan Al-Kilabi informed him that the Messenger of Allah ﷺ wrote to him, [saying] to give the wife of Ashyam Ad-Dababi the inheritance from her husband's blood-money.'

#### Key points:

- Umer R.A. initially thought that the widows do not receive inheritance from the blood-money of their husbands. However, after knowing the information mentioned in this hadith, he changed his opinions. Now the fuqaha unanimously agree that the deceased wife shall be the inheritor of her husband's blood-money.
- The term Aqilah in this hadith refers to the 'members of a clan from the father's side that are responsible for the payment of blood-money on behalf of the murderer'. However, according to a decision by Umer R.A., it is understood that other entities

link the individuals to each other and assist their members can also be considered as Aqilah. The wisdom behind making the Aqilah give the blood-money is that they can groom their people in a way that they refrain from killing.

### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2257 (Grade: **Saheeh**)

المتن:

حَدَّثَنَا قُتَيْبَةُ، حَدَّثَنَا الْلَّيْثُ، عَنْ أَبِي شَهَابٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَضَى فِي جَنِينِ امْرَأَةٍ مِّنْ تَبَانَ حَيَّانَ سَقْطَ مَيِّتًا بِغُرَّةٍ عَبَدِيًّا أَوْ أَمَّةٍ ثُمَّ إِنَّ الْمَرْأَةَ الَّتِي قُضِيَ عَلَيْهَا بِالْغُرَّةِ فَوْقَيْتَ فَقُضِيَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّ مِيزَانَهَا لِبَنِيهَا وَزَوْجِهَا وَأَنَّ عَقْلَهَا عَلَى عَصَبَتِهَا. قَالَ أَبُو عِيسَى وَرَوَى يُوْنُسَ هَذَا الْحَدِيثَ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ وَأَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَحْوِهُ وَرَوَاهُ مَالِكٌ عَنِ الزُّهْرِيِّ وَمَالِكٌ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مُرْسَلٌ.

### Translation:

The Messenger of Allah ﷺ judged in the case of a woman's fetus from Banu Libyan which miscarried [because of a stone being hurled at her by another women] the a Gurrah male or female slave be given to her. Then the woman about whom the Ghurah was judged Gurrah herself died. So the Messenger of Allah ﷺ judged that her inheritance was for her children and her husband, and that her blood-money was on her 'Asabah.

### Key points:

- Giving a Ghurah slave in payment to the lady who had a miscarriage was prescribed for the lady whose act resulted in the death of the fetus. This was to be paid by her *asaba*.
- Regarding rest of the *hadith*, there are various interpretations, as summarized below.
  - o The women who had a miscarriage also died herself later on. In this case, **her inheritance** was given to her heirs. Whereas, **Asaba of the women whose action resulted in the murder** had to pay the blood-money.
  - o According to a different interpretation, the lady whose action resulted in miscarriage and who was required to pay the Ghurah died later on. In this case, her inheritance went to her heirs rather than the *Asaba* who were responsible for paying the blood-money on her behalf.
- In either case, we know that *Asaba* are required to pay the blood-money, however, if there are any heirs because of them, there are no residuary shares of inheritance, *Asaba* do not receive any share (as in this case).

- As slaves do not exist any more, scholars have recommended that 1/20 of the whole *diyyah* be paid by some whose action results in the death of fetus of any women. Scholars have mentioned this amount to be 500 Dirhams.

#### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2258 (Grade: Hasan)

المتن:

حَدَّثَنَا أَبُو كُرَيْبٍ حَدَّثَنَا أَبُو أَسَامَةَ وَابْنُ مُمِيْرٍ وَكَيْبُعُ عَنْ عَبْدِ الْعَزِيزِ بْنِ عَمْرَ بْنِ عَبْدِ الْعَزِيزِ، عَنْ عَبْدِ اللَّهِ بْنِ مَوْهِبٍ، وَقَالَ بَعْضُهُمْ عَنْ عَبْدِ اللَّهِ بْنِ مَوْهِبٍ عَنْ تَمَيِّمِ الدَّارِيِّ، قَالَ سَأَلَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَا الْسُّنْنَةُ فِي الرَّجُلِ مِنْ أَهْلِ الْبَيْرِكِ يُسْلِمُ عَلَى يَدِي رَجُلٍ مِنَ الْمُشْرِكِينَ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "هُوَ أَوْلَى النَّاسِ بِمَخِيَّاهُ وَمَمَاتِهِ". قَالَ أَبُو عِيسَى هَذَا حَدِيبَةٌ لَا نَعْرُفُهُ إِلَّا مِنْ حَدِيبَةِ عَبْدِ اللَّهِ بْنِ مَوْهِبٍ وَيُقَالُ أَبْنَ مَوْهِبٍ عَنْ تَمَيِّمِ الدَّارِيِّ وَقَدْ أَذْخَلَ بَعْضُهُمْ بَيْنَ عَبْدِ اللَّهِ بْنِ مَوْهِبٍ وَبَيْنَ تَمَيِّمِ الدَّارِيِّ قِبِيَّةَ بْنِ دُؤَيْبٍ وَلَا يَحْمِحُ رَوَاهُ يَحْمِي بْنِ حَمْزَةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ عَمْرَ وَرَأَدِيفِيَّةِ قِبِيَّةَ بْنِ دُؤَيْبٍ وَهُوَ عَنِيَّ لَيْسَ بِمُتَّسِّعٍ وَالْعَمَلُ عَلَى هَذَا الْحَدِيبَةِ عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ وَقَالَ بَعْضُهُمْ يُجْعَلُ مِيرَاثُهُ فِي بَيْتِ الْمَالِ وَهُوَ قَوْلُ الشَّافِعِيِّ وَاحْتَجَ حَدِيبَةِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "أَنَّ الْوَلَاءَ لِمَنِ أَعْنَقَ".

#### Translation:

It is narrated from Tamim Ad-Dar R.A. who said: "I asked the Messenger of Allah ﷺ 'What is the Sunnah regarding a man among the people of who accepts Islam at the hand of a man among the Muslims?' So the if Messenger of Allah ﷺ said: 'He is the closest of the people to him in his life and his death.'" (Hasan)

#### Key points:

- Most of the scholars believe that *Wala* (proximity or relationship established) referred to in this narration, generates cooperation and help, but not the right to inherit. This is the view held by Hasan, Sha'bl, Malik and most of the *fuqaha*.

#### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2259 (Grade: Hasan)

المتن:

حَدَّثَنَا قَتَنِيَّةُ، حَدَّثَنَا أَبْنُ لَهِيَّعَةَ، عَنْ عَمْرِو بْنِ شَعْيَبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ "أَئْمَارُ رَجُلٍ عَاهَرٌ بُحْرَةٌ أَوْ أَمْةٌ فَالْوَلْدُ وَلَدُزِّيْلَأَيِّرُثُ وَلَا يُورَثُ". قَالَ أَبُو عِيسَى وَقَدْ رَوَى عَيْبُ أَبْنُ لَهِيَّعَةَ هَذَا الْحَدِيبَةَ عَنْ عَمْرِو بْنِ شَعْيَبٍ وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ أَنَّ وَلَدَ الْإِنْتَالَ يَرِثُ مِنْ أَبِيهِ.

#### Translation:

The messenger of Allah ﷺ said: "Any man who fornicates with a free woman, or a slave woman, then the child born from Zina does not inherit, nor is it inherited from." (Hasan)

#### Key points:

- Inheritance between the father and his children is established through lineage. No such relationship is established or recognized between the fornicator and his illegitimate child in Islam. As such, neither of them can inherit from the other.
- It is important to understand here that this ruling is regarding the child born out of Zina and his or her biological father. Neither father (and his relatives) nor the child born out of Zina (and his or her heirs) inherit from each other. Scholars explain that this remains the case even if the fornicator marries the women with whom he did Zina that led to the birth of the child.
- However, the child and his or her mother can inherit from each other.
- It is also important to clarify here that the child born out of wedlock, like every other child, he or she is born sinless; it does not carry the stigma of the sin of the father or mother or both. A basic principle in Islamic justice is that no one bears the blame for another's fault. A child born as a result of an illegitimate relationship suffers no adverse discrimination on account of his parents' sin.

#### Hadith Reference:

Jami At-Tirmidhi – Book 29, Hadith 2260 (Grade: **Daif**)

المتن:

حَدَّثَنَا قُتَيْبَةُ، حَدَّثَنَا أَبْنُ لَهِيَّةَ، عَنْ عَبْرِو بْنِ شَعْبَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ "يَرِثُ الْوَلَاءُ مَنْ يَرِثُ الْبَيْلَاءَ". قَالَ أَبُو عَيْسَى هَذَا حَدِيثٌ لَّيْسَ إِسْنَادُهُ بِالْقِرْيَشِ.

#### Translation:

The Messenger of Allah ﷺ said: "The one who inherits the Wala is the one who inherits the wealth."

#### Key points:

- If a freed slave meets his death and leaves behind neither heirs nor 'Asabah, then his inheritance shall go to the one who sets the slave free (if he or she is alive) or his or her progeny (if he or she is not alive and if the progeny consists of those who fall under the category of 'asaba bi-nafsihi' and are males).

**Hadith Reference:**

Jami At-Tirmidhi – Book 29, Hadith 2261 (Grade: **Daif**)

المتن:

حَدَّثَنَا هَارُونُ أَبْيُو مُوسَى الْمُسْتَمِيلُ الْبَعْدَادِيُّ، حَدَّثَنَا مُحَمَّدُ بْنُ حَرْبٍ، حَدَّثَنَا عَمْرُ بْنُ رُوبَةَ التَّغْلِيْبِيُّ، عَنْ عَبْدِ الْوَاحِدِيِّ عَبْدِ اللَّهِ أَبْنَى بُشَّرِ الْتَّضْرِيْبِيِّ، عَنْ وَالْمَلَّةِ بْنِ الْأَسْقَعِ، قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "الْمُرْأَةُ تَحُوزُ ثَلَاثَةَ مَوَارِيثَ عَيْنَهَا وَلَدَهَا الَّذِي لَا عَنِتَّ عَلَيْهِ". هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ لَا يُعْرَفُ إِلَّا مَنْ هَذَا الْوَجْهُ مِنْ حَدِيثِ مُحَمَّدِ بْنِ حَرْبٍ.

**Translation:**

The Messenger of Allah ﷺ said: "The woman collects three inheritance: Whomever she freed, whomever she found, and the child for which she made Li'an."

**Key points:**

- There are three cases mentioned in this hadith.
  - o In the first case, according to the majority of the companions and jurists, if a woman frees a slave and he dies without leaving behind any legal heir or 'Asabah, then the woman shall inherit from him.
  - o About the second case, there is a difference of opinion. According to Imam Ishaq Ibn Rahwayh, if a woman found an abandoned child and raises him or her, she becomes an heir. However, most of the scholars do not consider such a woman to be the heir as this is a *daif* narration and there are other *ahadith* which apparently go against this opinion. According to another opinion, the woman in this case does not become an heir without conditions. However, if there are no other heirs of such a child, then the woman has a higher right on his or her property than other Muslims (if she meets the relevant conditions). This is the opinion of Qadhi Ayaz.
  - o In the third case, if a father disowns the child through *lian*, then the ties of inheritance between the child and that man break; however, the mother in this case remains to be a heir.

## A DUA AND AN EXPRESSION OF OUR FEELINGS

Ya Allah! Ya Rabbana!

اللَّهُمَّ صَلِّ عَلَى مُحَمَّدٍ كَمَا ذَكَرَهُ الظَّاهِرُونَ  
وَكُلُّمَا غَفَلَ عَنْ ذِكْرِهِ الْغَافِلُونَ.

We are doing this effort only to acquire your pleasure

And to get closer to you and be among those who you love

And to gain companionship of your beloved messenger in the hereafter.

Ya Allah! Bless us with what we are looking for.

We accept all our weaknesses, shortcomings, and Mistakes.

And acknowledge all your attributes and love you have for us

Which is our hope in this world and the next.

Ya Allah! Bless us with what we are looking for.

Ya Rabbana! Forgive us. Forgive us. Forgive us.

For we are dependant on You and You are our only hope.

Forgive us. And make us among the ones You love.

And not among those who go astray and lead others to go astray.

Ya Allah! Bless us with what we are looking for.

اللَّهُمَّ صَلِّ عَلَى سَيِّدِنَا مُحَمَّدٍ وَعَلَى أَلِي سَيِّدِنَا مُحَمَّدٍ بِعَدِّهِ كُلَّ دَرَّةٍ مَا تَهْوِي أَلْفَ مَرَّةٍ